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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

LEVELFIELDS, INC., individually and on behalf of all others similarly situated,) Case No.: 3:24-cv-02760-WHO
)
Plaintiff,) DEFENDANT REDDIT, INC.'S
) NOTICE OF MOTION AND MOTION
v.) TO DISMISS COMPLAINT
)
REDDIT, INC., a California Corporation,) Date: August 28, 2024
) Time: 2:00 p.m.
Defendant.)
)
)
)

Before: Hon. William H. Orrick

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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on August 28, 2024 at 2:00 p.m., or as soon thereafter as the matter may be heard, before the Honorable William H. Orrick of the U.S. District Court for the Northern District of California, in the Phillip Burton Federal Building & United States Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102, Defendant Reddit, Inc. (“Reddit”) will and hereby does move for an order dismissing the Class Action Complaint (“Complaint”).

Reddit seeks dismissal of the Complaint on the grounds that Plaintiff lacks standing for all of its claims under Article III of the U.S. Constitution and California’s Unfair Competition Law (“UCL”) and because Plaintiff fails to state a claim upon which relief can be granted or its claims are otherwise barred pursuant to the parties’ contract. Reddit’s motion is based upon this Notice of Motion, the Memorandum of Points and Authorities, the Declaration of Mikaela Burkhardt filed concurrently herewith, the pleadings and records in this action, oral argument, and any other matters properly before this Court.

STATEMENT OF ISSUES TO BE DECIDED (Civil L.R. 7-4(a)(3))

1. Whether Plaintiff lacks standing for all of its claims under Article III because Plaintiff fails to allege any injury that is traceable to any action by Reddit.

2. Whether Plaintiff fails to state a claim for breach of contract because the Complaint fails to allege breach of any actual promise made by Reddit.

3. Whether Plaintiff lacks standing and fails to state a claim under the UCL by failing to allege sufficient economic injury as a result of the challenged conduct and because the Complaint does not allege that Reddit engaged in any unlawful, unfair, or fraudulent business practice.

4. Whether Plaintiff’s claims are barred by the exclusive remedy set forth in the parties’ contract, which required Plaintiff to submit a claim for advertising credits within 45 days of the relevant invoice.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Plaintiff’s claims are a misguided attempt to hold Reddit responsible for the fraudulent acts of anonymous third parties who misuse Reddit—and every other online advertising platform in the world—for improper purposes. As explained in the complaint, “click fraud” refers to the practice of third parties, who have no intention of doing business with an online advertiser, clicking on an advertisement. Although the existence of “click fraud” is well-known, it can be difficult to detect because determining whether any particular click is fraudulent or valid necessarily depends on the subjective motives of anonymous third parties. And while advertising platforms (and third-party service providers) employ a range of techniques to identify and weed out invalid clicks, there is no perfect solution.

The fact that click fraud exists is no surprise to online advertisers, including those who use Reddit’s advertising platform. In addition to the massive amount of publicly available information on the topic, Reddit’s contracts with advertisers expressly disclose that “third parties may generate impressions, clicks, or other desired actions with respect to your advertisements for prohibited and improper purposes.” Compl. ¶ 16. Reddit likewise disclaims any guarantee that ads on its platform “will reach users with your selected criteria, reach the users that you intended when you selected the criteria, and/or deliver any specific result.” *Id.* Instead, advertisers agree to pay for use of the platform based on “Reddit’s measurement of the applicable billing metrics, such as impressions, views or clicks.” *Id.* If an advertiser suspects it has been charged for an invalid click, as is industry practice, Reddit provides a process that advertisers can use to claim credits for future advertising. These express contractual provisions, and the lack of any promises to the contrary, are fatal to Plaintiff’s claims.

The Complaint should be dismissed for several independent reasons. *First*, Plaintiff has failed to sufficiently plead any actual injury and therefore lacks Article III standing to bring any of its claims. Critically, Plaintiff does not identify any instance in which it was allegedly charged for an invalid click or allege that it experienced a rate of click fraud that exceeded any contractual or extra-contractual promises made by Reddit. Instead, Plaintiff generically alleges

1 that Reddit “collected fees” for some unknown quantum of unidentified clicks that Plaintiff
 2 believes “were not actual and actionable” and “were useless” (Compl. ¶¶ 32, 42). These
 3 conclusory allegations are not enough to rise above the speculative level and, in any event, any
 4 such harm would have been caused by unnamed fraudsters and not the result of any wrongdoing
 5 by Reddit.

6 *Second*, Plaintiff does not state any viable cause of action. Plaintiff’s breach of contract
 7 claim must be dismissed because the Complaint does not identify any promise by Reddit to
 8 prevent or eliminate click fraud from its platform. On the contrary, Reddit discloses the fact of
 9 click fraud, disclaims any guarantee of specific results, and makes clear that the parties will use
 10 Reddit’s measurements to determine the applicable billing metrics. Compl. ¶ 16. If an advertiser
 11 believes it was charged for an invalid click, Reddit offers a process by which the advertiser can
 12 request rebates in the form of advertising credits. Compl. ¶ 13. No more is required under the
 13 parties’ contract. To the extent Plaintiff is alleging a breach of the implied duty of good faith
 14 and fair dealing, that claim is no different from its breach of contract claim and, in any event,
 15 would be similarly foreclosed by the express contractual disclaimers.

16 Plaintiff’s UCL claim simply repackages its contract claim, which is barred by the Ninth
 17 Circuit’s decision in *Sonner v. Premier Nutrition Corp.*, as well as the economic loss rule. And
 18 in addition to the lack of any alleged economic harm, there is no allegation that Reddit violated
 19 any statute, made any deceptive misrepresentation about the rate of click fraud on its platform, or
 20 has engaged in unscrupulous business practices. On the contrary, Reddit properly discloses the
 21 fact of click fraud on its platform and offers a claims process for advertisers who believe they
 22 have been charged for invalid clicks.

23 Because Plaintiff lacks standing, and its claims are contractually barred and have no legal
 24 basis, the Complaint should be dismissed.

25 **BACKGROUND**

26 **A. Reddit and the Advertising Contracts**

27 Reddit is a network of discussion-based online communities that generates revenue from
 28 advertising on its popular website, reddit.com. Compl. ¶ 8. The relationship between Reddit and

advertisers on its platform is governed by contract. Compl. ¶¶ 15, 16. Although it appears Plaintiff intended to attach to its Complaint one of the contracts governing its relationship with Reddit (Compl. ¶ 15), it failed to do so. Instead, Plaintiff references the “IAB Standard Terms And Conditions Version 3.0” in paragraph 16 of the Complaint; however the quoted language in that paragraph is actually from Reddit’s “Ads Platform” contract. Reddit is therefore providing a copy of the IAB 3.0 Terms (Exhibit A), as well as the Ads Platform contract (Exhibit B), in the accompanying Declaration of Mikaela Burkhardt (“Burkhardt Decl.”).¹ Neither contract supports Plaintiff’s claims.

Although it is unclear which contract Plaintiff intended to reference, the Complaint contains a block quotation from Reddit’s Ads Platform contract that (i) discloses the existence of click fraud on its platform; (ii) disclaims any guarantee of specific results from clicks; and (iii) explains the parties would use Reddit’s measurements to determine billing metrics, including clicks.

When serving your Ad, Reddit will use reasonable means to ensure that the Ad is delivered according to your criteria, but ***Reddit does not guarantee in every instance that your Ad will reach users with your selected criteria, reach the users that you intended when you selected the criteria, and/or deliver any specific result.***

You will pay for your use of the Platform after your Ad is delivered ***based on Reddit’s calculation of amounts due and Reddit’s measurement of the applicable billing metrics, such as impressions, views or clicks.*** Amounts due are exclusive of taxes.

You will not and will not authorize any third party to generate invalid or fraudulent impressions, clicks, or other desired actions with respect to the Platform or to use any unauthorized means to extract advertising or performance-related data from the Platform. ***You acknowledge that third parties may generate impressions, clicks, or other desired actions with respect to your advertisements for prohibited or improper purposes.***

¹ On a motion to dismiss, the Court’s review is limited to the face of the complaint and matters judicially noticeable. *MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986). However, the Court may consider documents which are referenced in the complaint and which are accepted by all parties as authentic. *In re Silicon Graphics Inc. Sec. Litig.*, 183 F.3d 970, 986 (9th Cir. 1999), *abrogated on other grounds by S. Ferry LP, No. 2 v. Killinger*, 542 F.3d 776, 784 (9th Cir. 2008). In the alternative, the Court may take judicial notice of the exhibits to the Burkhardt Decl. (*See Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007)), which are available at https://www.iab.com/wp-content/uploads/2015/06/IAB_4As-tsandcs-FINAL.pdf (Ex. A) and <https://business.reddithelp.com/helpcenter/s/article/REDDIT-ADVERTISING-PLATFORM-TERMS> (Ex. B), respectively.

1 Compl. ¶ 16 (emphasis added) (quoting Ex. B § 3).²

2 In addition, the Ads Platform terms contain any number of other provisions that preclude
3 Plaintiff's claims. For example, the Ads Platform contract includes a specific remedial process
4 for handling disputed charges. *See* Ex. B § 3. If an advertiser believes they have been charged
5 for an invalid click or fraudulent traffic, it can submit a claim for ad credits within a 45-day time
6 period. *Id.* The Complaint acknowledges that advertisers can and do avail themselves of this
7 process. Compl. ¶ 13 (alleging Reddit provides "rebates to advertisers who have complained of
8 being charged for 'invalid clicks.'").

9 **B. Plaintiff's Claims Against Reddit**

10 Plaintiff Levelfields, Inc. is a Virginia corporation that appears to be an investment
11 research platform that utilizes artificial intelligence. According to its website, Plaintiff is a
12 sophisticated entity that consists of "a team of software engineers, linguists, data scientists and
13 entrepreneurs who see the world not as it is, but as it could be." Burkhardt Decl. ¶ 4, Ex. C.

14 According to the Complaint, Plaintiff began advertising on reddit.com in September
15 2022. Compl. ¶ 15. The Complaint does not contain any factual allegations regarding Plaintiff's
16 advertising practices, ad traffic patterns, conversion ratios, or the like. The Complaint also does
17 not contain any allegations regarding Plaintiff's efforts to minimize invalid traffic on its site, the
18 rate of click fraud Plaintiff believes it experienced on the Reddit platform, or identify a single
19 click that Plaintiff believes was invalid.

20 Plaintiff generically alleges that "Reddit began charging Plaintiff for clicks, but
21 Plaintiff's system did not log traffic which corresponded with the clicks they were charged for."
22 Compl. ¶ 17. Plaintiff does not provide any information about this unlogged traffic or whether it
23 engaged with Reddit to understand any apparent discrepancy. Instead, Plaintiff alleges that, at
24 some unspecified time, it contacted Reddit to request "click logs." Compl. ¶ 18. Plaintiff alleges
25 that Reddit provided "click logs" in response to its request but declined to provide IP addresses.

26 ² Similarly, the industry-standard IAB 3.0 terms provide: "Unguaranteed Deliverables. If an IO
27 contains CPA Deliverables, CPL Deliverables, or CPC Deliverables, the predictability,
28 forecasting, and conversions for such Deliverables may vary and guaranteed delivery, even
delivery, and makegoods are not available." Ex. A § VI.c.

1 *Id.* The Complaint does not allege that the “click logs” provided by Reddit somehow reveal any
 2 invalid clicks, a high rate of click fraud, or anything else out of the ordinary. Nor does it allege
 3 how the provision of IP addresses would have cured the purported issue.

4 Rather than avail itself of the contractual process to claim advertising credits, Plaintiff
 5 filed this lawsuit asserting: (1) breach of contract; and (2) violation of California’s Unfair
 6 Competition Law (“UCL”). Compl. ¶¶ 28-44. Plaintiff purports to bring these claims on behalf
 7 of a putative class of persons who paid Reddit for Ads. Compl. ¶ 19.

8 ARGUMENT

9 Under Federal Rule 12(b)(1), the Court must dismiss any action that lacks subject matter
 10 jurisdiction. Fed. R. Civ. P. 12(b)(1). At the core of the Court’s jurisdictional inquiry is Article
 11 III’s standing requirement. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 559-60 (1992). The
 12 “‘irreducible constitutional minimum’ of standing consists of three elements.” *Spokeo, Inc. v.*
 13 *Robins*, 578 U.S. 330, 337 (2016) (quoting *Lujan*, 504 U.S. at 560-61). “The plaintiff must have
 14 (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the
 15 defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Id.* “Where, as
 16 here, a case is at the pleading stage, the plaintiff must clearly allege facts demonstrating[] each
 17 element.” *Callahan v. Ancestry.com Inc.*, No. 20-cv-08437-LB, 2021 U.S. Dist. LEXIS 112036,
 18 at *6 (N.D. Cal. June 15, 2021) (citation omitted).

19 In addition, a complaint must be dismissed when it “fail[s] to state a claim upon which
 20 relief can be granted.” Fed. R. Civ. P. 12(b)(6). “The court may dismiss a complaint as a matter
 21 of law for (1) lack of cognizable legal theory or (2) insufficient facts under a cognizable legal
 22 claim.” *Lovesy v. Armed Forces Benefit Ass’n*, No. C 07-2745 SBA, 2008 U.S. Dist. LEXIS
 23 97790, at *5 (N.D. Cal. Nov. 5, 2008) (citation omitted). Because “only a complaint that states a
 24 plausible claim for relief survives a motion to dismiss[,]” “[t]hreadbare recitals of the elements
 25 of a cause of action, supported by mere conclusory statements, do not suffice.” *Aschcroft v.*
 26 *Iqbal*, 556 U.S. 662, 678-79 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007). A court
 27 thus need not accept conclusory allegations or unwarranted inferences as true. *Schmier v. U.S.*
 28 *Ct. of Appeals*, 279 F.3d 817, 820 (9th Cir. 2002).

I. PLAINTIFF LACKS ARTICLE III STANDING

It is axiomatic that in order to proceed in federal court a Plaintiff must allege an injury in fact sufficient to meet Article III’s standing threshold. “As the parties invoking federal jurisdiction, plaintiffs bear the burden of establishing their standing to sue.” *San Diego Cty. Gun Rights Comm. v. Reno*, 98 F.3d 1121, 1126 (9th Cir. 1996) (citing *Lujan*, 504 U.S. at 561), *overruled on other grounds by District of Columbia v. Heller*, 554 U.S. 570 (2008). It is settled that the plaintiff “must allege in [its] pleading the facts essential to show jurisdiction,” and “[i]f [it] fails to make the necessary allegations [it] has no standing.” *McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936); *accord Raines v. Byrd*, 521 U.S. 811, 818 (1997). The plaintiff must plead (and ultimately prove) “a causal connection between the injury and the conduct complained of – the injury has to be ‘fairly trace[able] to the challenged action of the defendant.’” *Lujan*, 504 U.S. at 560-61 (citations omitted). Such an injury “must have actually occurred or must occur imminently; hypothetical, speculative or other ‘possible future’ injuries do not count in the standings calculus.” *Schmier*, 279 F.3d at 821.

Here, Plaintiff has failed to allege that it has suffered any injury, let alone a “concrete” injury sufficient to satisfy Article III’s requirements. For example, the Complaint does not identify any specific clicks or traffic segment that it paid for and now believes to be invalid. Likewise, the Complaint does not allege Plaintiff experienced a rate of click fraud over and above any representation made by Reddit. Instead, Plaintiff generically alleges “Reddit began charging Plaintiff for clicks, but Plaintiff’s system did not log traffic which corresponded with the clicks they were charged for.” Compl. ¶ 17. The Complaint does not provide any factual allegations to support this generalized statement, such as specific clicks, traffic segments, contested charges, or any other indicia that would support a cognizable, non-speculative harm.

Plaintiff therefore has failed to allege facts sufficient to establish Article III standing for any of its claims. *See Riordan v. W. Digit. Corp.*, No. 5:21-cv-06074-EJD, 2022 U.S. Dist. LEXIS 101685, at *8 (N.D. Cal. June 7, 2022) (finding plaintiffs’ allegations insufficient to establish injury in fact where the complaint failed to “allege any details regarding the data loss or how they were harmed”); *Lopez v. Apple, Inc.*, 519 F. Supp. 3d 672, 682 (2021) (“Absent factual

1 allegations regarding the rate of accidental triggers on devices that Plaintiffs actually own, as
 2 well as their particular use of those devices in contexts where they had a reasonable expectation
 3 of privacy, the injury remains to speculative for Article III standing.”). Moreover, any such
 4 injury would not be “fairly traceable” to any conduct by Reddit, especially given the express
 5 disclosures about the existence of click fraud on its platform. *See Birdsong v. Apple, Inc.*, 590
 6 F.3d 955, 961 (9th Cir. 2009) (no injury in fact where plaintiffs did not allege any misleading
 7 representation by defendant and defendant, in fact, provided an express warning regarding the
 8 same conduct attributed to the alleged harm). Absent a promise by Reddit to completely
 9 eliminate all invalid clicks, to the extent any harm to Plaintiff occurred, it was caused by the
 10 fraudsters, bots, or web users who inadvertently clicked on Plaintiff’s advertisements—not
 11 Reddit.

12 **II. THE COMPLAINT FAILS TO STATE A CLAIM FOR BREACH OF** 13 **CONTRACT**

14 Under California law, a claim for breach of contract requires the violation of an *actual*
 15 *promise* contained within or incorporated into a contract. *See Murphy v. Hartford Accident &*
 16 *Indem. Co.*, 177 Cal. App. 2d 539, 543 (1960). The plaintiff must point to the “specific
 17 provisions in the contract creating the obligation that defendant is said to have breached.” *In re*
 18 *Anthem Data Breach Litig.*, 162 F. Supp. 3d 953, 978 (N.D. Cal. 2016) (citation omitted); *Woods*
 19 *v. Google Inc.*, No. 05:11-cv-1263-JF, 2011 U.S. Dist. LEXIS 88795, at *9-10 (N.D. Cal. Aug.
 20 10, 2011).

21 Here, Plaintiff’s theory of breach is elusive, at best. As a threshold matter, Plaintiff did
 22 not attach to its Complaint the contract it claims that Reddit breached. Compl. ¶ 15 (erroneously
 23 alleging that “[a] true and correct copy of the contract is attached hereto as Exhibit A.”). Then,
 24 in paragraph 16 of the Complaint, Plaintiff references the “IAB Standard Terms And Conditions
 25 Version 3.0” but quotes material from an entirely separate contract, i.e., Reddit’s Ads Platform
 26 Terms and Conditions. *Compare* Burkhardt Decl. Ex. A, *with* Ex. B. In any event, the
 27 Complaint does not explain how Reddit allegedly breached the quoted provision, or anything
 28 else in the parties’ contracts.

1 For example, in its “First Claim for Relief,” Plaintiff generically alleges Reddit “breached
 2 the contracts” without identifying or engaging with any specific contractual language. Instead,
 3 Plaintiff alleges Reddit “collect[ed] fees from Plaintiff and the Class for clicks even though
 4 Defendants knew, or should have reasonably known, *that the clicks were not actual and*
 5 *actionable.*” Compl. ¶ 32 (emphasis added). But the parties’ contracts do not use the phrase
 6 “actual and actionable” (whatever that means) and, on the contrary, Plaintiff acknowledged that
 7 “third parties may generate impressions, clicks, or other desired actions with respect to your
 8 advertisements for prohibited or improper purposes.” Compl. ¶ 16; Ex. B § 3.

9 In the face of this disclaimer, Plaintiff elected to proceed with the transaction,
 10 understanding that it would be charged “based on Reddit’s calculation of amounts due and
 11 Reddit’s measurement of the applicable billing metrics, such as impressions, views or clicks.”
 12 Compl. ¶ 16. The parties never agreed that Reddit would only invoice Plaintiff for a subset of
 13 clicks that Plaintiff finds to be “actual and actionable.” Plaintiff simply invents this language in
 14 an effort to rewrite the parties’ contract.

15 This express contractual language likewise defeats an implied covenant claim. *Singh v.*
 16 *Google Inc.*, No. 16-cv-03734, 2017 U.S. Dist. LEXIS 85196, at *8-9 (N.D. Cal. June 2, 2017)
 17 (citing *Damabeh v. 7-Eleven, Inc.*, No. 5:12-CV-1739-LHK, 2013 U.S. Dist. LEXIS 66565, at *6
 18 (N.D. Cal. May 8, 2013) (dismissing covenant of good faith and fair dealing claims as an attempt
 19 to rewrite the parties’ contract where “Google acknowledges the existence of click fraud and the
 20 possibility that an advertiser would be charged for fraudulent clicks”); *Carma Devs. (Cal.), Inc.*
 21 *v. Marathon Dev. Cal., Inc.*, 2 Cal. 4th 342, 374 (1992).³

22 Plaintiff’s contract claim must be dismissed.

23
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 26
 27 ³ To the extent Plaintiff suggests Reddit had an obligation to provide IP address when it provided
 28 “click logs,” the Complaint does not identify any such contractual promise (because it does not
 exist) or other basis by which Reddit was required to provide advertisers with IP addresses.

1 **III. PLAINTIFF LACKS STANDING AND HAS FAILED TO STATE A CLAIM FOR**
 2 **ANY VIOLATION OF THE UCL**

3 Plaintiff's Section 17200 claim fails for multiple independent reasons as well. *First*, as a
 4 company litigating a commercial dispute, Plaintiff lacks standing under the UCL. *Linear Tech.*
 5 *Corp. v. Applied Materials, Inc.*, 152 Cal. App. 4th 115, 135 (2007) ("where a UCL action is
 6 based on contracts not involving either the public in general or individual consumers who are
 7 parties to the contracts, a corporate plaintiff may not rely on the UCL for the relief it seeks");
 8 *TopDevz, LLC v. LinkedIn Corp.*, No. 20-cv-08324-SVK, 2021 U.S. Dist. LEXIS 145186 at
 9 *9-11 (N.D. Cal Aug. 3, 2021) (dismissing UCL claim for alleged overstatement of actual user
 10 engagement on LinkedIn where complaint failed to allege plaintiff corporation was a "small and
 11 unsophisticated" entity). Here, Plaintiff has not, and cannot, allege it is an unsophisticated party
 12 given the nature of its business and team. *See* Burkhardt Decl. ¶ 4, Ex. C.

13 *Second*, to have standing under the UCL, Plaintiff must plausibly allege that it lost money
 14 or property as a result of an unlawful, unfair, or fraudulent business practice. Cal. Bus. & Prof.
 15 Code §§ 17200, 17204; *Walker v. Geico Gen. Ins. Co.*, 558 F.3d 1025, 1027 (9th Cir. 2009);
 16 *Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310, 322 (2011), *overruled on other grounds by*
 17 *Lauren Moshi, LLC v. Fuentes*, No. CV 18-6725-DMG (JPRx), 2020 U.S. Dist. LEXIS 82920
 18 (C.D. Cal. Jan. 17, 2020). As discussed above, the Complaint does not plead any injury-in-fact,
 19 let alone economic injury as a result of any unlawful, deceptive, or unfair business practice by
 20 Reddit. The Complaint does not identify *any* instance in which Plaintiff was allegedly charged
 21 for invalid clicks that Reddit was somehow supposed to prevent or detect, or that Plaintiff
 22 experienced click fraud at rates higher than Reddit had promised.

23 In *Singh v. Google*, 824 F. App'x. 512, 513 (9th Cir. 2020), by contrast, Plaintiff alleged
 24 Google misrepresented the efficacy of the filters it used to detect fraudulent clicks. After
 25 becoming suspicious that his ad campaigns were experiencing click fraud at rates higher than
 26 Google's alleged representations, Mr. Singh retained a third-party to analyze traffic to his site.
 27 *Id.* This analysis, according to the complaint, purported to demonstrate that Google's filters
 28 caught fewer fraudulent clicks than advertised. *Id.* Taken together, the Ninth Circuit found these

1 allegations sufficient to draw a reasonable inference that Singh’s ad campaigns “suffered
 2 higher-than-advertised rates of fraudulent clicks not caught by Google’s filters, and that he
 3 accordingly paid for more fraudulent clicks than Google advertised he would.” *Id.*

4 There are no such allegations here. Plaintiff has not identified any statement that is
 5 allegedly misleading. Even if there was such a statement, Plaintiff has not alleged any factual
 6 basis, such as a third-party analysis, to suggest it has experienced higher-than-advertised rates of
 7 click fraud on Reddit’s platform. Instead, Plaintiff makes the threadbare allegation—on
 8 information and belief—that “Plaintiff, and other Class Members, were charged by Defendant
 9 for fraudulent clicks.” Compl. ¶ 18. This type of conclusory and speculative allegation is
 10 insufficient to defeat a motion to dismiss. *Iqbal*, 556 U.S. at 678-79; *Shroyer v. New Cingular*
 11 *Wireless Servs.*, 622 F.3d 1035, 1042 (9th Cir. 2010) (“Claims made on information and belief
 12 are not usually sufficiently particular, unless they accompany a statement of facts on which the
 13 belief is founded.” (citation omitted)); *BMA LLC v. HDR Glob. Trading Ltd.*, No. 20-cv-03345-
 14 WHO, 2021 U.S. Dist. LEXIS 169327, at *15 (N.D. Cal. Sept. 7, 2021) (conclusory allegations
 15 made on “information and belief” without more are insufficient to defeat motion to dismiss).

16 *Third*, the Complaint does not adequately allege that Reddit has engaged in any unlawful,
 17 unfair, or fraudulent business practice. Plaintiff simply recites the elements of a Section 17200
 18 claim and repackages its claim for breach of contract. This is insufficient. *WeBoost Media*
 19 *S.R.L. v. LookSmart Ltd.*, No. C 13-5304 SC, 2014 U.S. Dist. LEXIS 26921, at *8 (N.D. Cal.
 20 Feb. 28, 2014) (finding UCL claims barred by economic loss rule in click fraud case where
 21 plaintiff’s UCL claims were premised on the same conduct that formed the basis of its breach of
 22 contract claim); *see also Sonner v. Premier Nutrition Corp.*, 971 F.3d 834, 841 (9th Cir. 2020)
 23 (requiring plaintiff to establish inadequate remedy at law before seeking equitable remedy under
 24 UCL); *Rabin v. Google LLC*, No. 22-cv-04547-BLF, 2023 U.S. Dist. LEXIS 104694, at *40-41
 25 (N.D. Cal. June 15, 2023) (dismissing UCL claims where plaintiff failed “to plead any facts as to
 26 why the damages they seek under their breach of contract claim is an inadequate remedy”);
 27 *TopDevz*, 2021 U.S. Dist. LEXIS 145186 at *12-15 (same).

1 Even if Plaintiff could get past the economic loss and equitable remedy doctrines, which
 2 it cannot, the Complaint still fails to allege any conduct that is unlawful, deceptive, or unfair.
 3 Each prong is addressed in turn.

4 *Unlawful Prong.* To allege a violation of the “unlawful” prong of the UCL, Plaintiff
 5 must identify a statute or other law that Reddit allegedly violated. *Shroyer*, 622 F.3d at 1044
 6 (unlawful prong requires an act “forbidden by law, be it civil or criminal, federal, state, or
 7 municipal, statutory, regulatory, or court-made.”) (quoting *Saunders v. Superior Court*, 27 Cal.
 8 App. 4th 832, 838-39 (1994)); *Cavender v. Wells Fargo Bank, N.A.*, No. 16-cv-00703-KAW,
 9 2016 U.S. Dist. LEXIS 120176, at *27 (N.D. Cal. Sept. 6, 2016) (citing *Ingels v. Westwood One*
 10 *Broad. Servs., Inc.*, 129 Cal. App. 4th 1050, 1060 (2005)) (same).

11 Here, Plaintiff alleges Reddit acted “unlawfully” by breaching the parties’ contract and
 12 because it was unjustly enriched as a result. Compl. ¶ 39. It is well-established that a breach of
 13 contract claim is insufficient to support a claim under the “unlawful” prong of the UCL.
 14 *Shroyer*, 622 F.3d at 1044 (“a common law violation such as breach of contract is insufficient” to
 15 state a claim for unlawful conduct) (citation omitted)); *Singh*, 2017 U.S. Dist. LEXIS 85196, at
 16 *11 (“a UCL claim cannot rest on a claim for breach of the implied covenant”).

17 Plaintiff’s claim under the unlawful prong must be dismissed.

18 *Unfair Prong.* Plaintiff also alleges that Reddit’s “business practices” violate the UCL’s
 19 “unfair” prong. Compl. ¶ 38. Under the UCL’s unfairness prong, courts consider: (1) whether
 20 the challenged conduct is tethered to any underlying constitutional, statutory or regulatory
 21 provision, or that it threatens an incipient violation of an antitrust law, or violates the policy or
 22 spirit of an antitrust law, (2) whether the practice is immoral, unethical, oppressive, unscrupulous
 23 or substantially injurious to consumers, or (3) whether the practice’s impact on the victim
 24 outweighs the reasons, justifications and motives of the alleged wrongdoer. *See Doe v. CVS*
 25 *Pharmacy, Inc.*, 982 F.3d 1204, 1214-15 (9th Cir. 2020).

26 Rather than engage with any of these formulations of unfairness, Plaintiff makes the
 27 conclusory allegation that “(i) the utility of Defendants’ [sic] scheme is significantly outweighed
 28 by the gravity of the harm the scheme imposes on Plaintiff and the Class; (ii) the injury suffered

1 by Plaintiff and the Class as a result of Defendants’ [sic] scheme is not one that Plaintiff and the
 2 Class could have reasonably avoided; and (iii) Defendants’ [sic] scheme runs counter to
 3 legislatively declared and public policy.” Compl. ¶ 38.

4 Merely reciting aspects of the “unfairness” test, without more, is insufficient to defeat a
 5 motion to dismiss. *Iqbal*, 566 U.S. at 678 (“To survive a motion to dismiss, a complaint must
 6 contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its
 7 face’” (citation omitted)); *see also Shroyer*, 622 F.3d at 1044 (affirming dismissal of UCL unfair
 8 prong claims where “[w]hat remains are conclusory allegations . . . and the court cannot
 9 determine from [Plaintiff’s] barebone allegations that he has stated a plausible claim”). Indeed,
 10 the repeated references to “Defendants” and a “scheme” in paragraph 38 suggest the allegations
 11 were copied from an inapposite complaint involving a scheme among multiple defendants. Even
 12 if Plaintiff believes there is a “scheme” at issue here, the Complaint does not articulate what it
 13 entailed, how it harmed Plaintiff, and what public policy the scheme allegedly violates.⁴

14 In any event, there is certainly nothing immoral, unscrupulous, or substantively unfair
 15 about offering advertising services, which advertisers (many of which are sophisticated
 16 businesses) can use, or not, at their own discretion. *Singh*, 2017 U.S. Dist. LEXIS 85196, at *13
 17 (dismissing claim under unfair prong where Google disclosed the risk of click fraud and
 18 provided a process to receive compensation for charges related to invalid clicks) (*citing Davis v.*
 19 *HSBC Bank Nevada*, 691 F.3d 1152, 1169-70 (9th Cir. 2012) (affirming dismissal of claim under
 20 unfair prong where defendant warned that the charges at issue would apply and plaintiff had an
 21 opportunity to avoid the charges by canceling within 90 days)).

22 Plaintiff’s claim under the “unfair” prong should be dismissed.

23 *Fraudulent Prong.* Plaintiff alleges that Reddit violated the UCL’s “fraudulent” prong
 24 because “Defendants’ [sic] business practices . . . are likely to deceive a reasonable consumer.”
 25 Compl. ¶ 40. A cause of action for fraud is subject to the heightened pleading requirements of

26 ⁴ To the extent Plaintiff’s alleged “scheme” is the same conduct giving rise to its breach of
 27 contract claim, Plaintiff’s claim under the unfairness prong of the UCL still fails as it “does not
 28 constitute separate conduct tethered to any legislative policy.” *Kaar v. Wells Fargo Bank, N.A.*,
 No. C 16-01290 WHA, 2016 U.S. Dist. LEXIS 71475, at *6-7 (N.D. Cal. June 1, 2016).

1 Rule 9(b), and the party alleging fraud “must state with particularity the circumstances
 2 constituting fraud or mistake.” Fed. R. Civ. P. 9(b). Rule 9(b) requires a plaintiff to be “specific
 3 enough to give defendants notice of the particular misconduct which is alleged to constitute the
 4 fraud charged so that they can defend against the charge and not just deny that they have done
 5 anything wrong.” *Singh*, 2017 U.S. Dist. LEXIS 85196, at *15 (quoting *Swartz v. KPMG LLP*,
 6 476 F.3d 756, 764 (9th Cir. 2007)). In addition to identifying the practice or statement with
 7 particularity, Plaintiff must also explain why the statement or practice was false or misleading.
 8 *Id.* at *15-16 (citing *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541, 1548 (9th Cir. 1994)).

9 Here again, Plaintiff never describes the so-called “business practices” that are alleged to
 10 be misleading. If anything, Plaintiff seeks to hold Reddit liable for the bad acts of anonymous
 11 third parties who may have clicked on Plaintiff’s ads without a legitimate interest in its services.
 12 But Reddit disclosed the existence of click fraud in its contracts with Plaintiff, who freely and
 13 voluntarily decided to continue with the transaction, in the face of this express disclosure. That
 14 “business practice” cannot form the basis of a fraudulent misrepresentation claim.

15 In addition, as a class representative proceeding on a claim of misrepresentation,
 16 Plaintiff must demonstrate actual reliance on the allegedly deceptive practice or statement. *In re*
 17 *Tobacco II Cases*, 46 Cal. 4th 298, 306 (2009). There are no allegations, not even a cursory one,
 18 regarding Plaintiff’s purported reliance on any statement made by Reddit. Because Plaintiff has
 19 not identified any false or misleading statement made by Reddit, much less one relied on by
 20 Plaintiff, the Complaint fails to state a claim under the UCL’s fraudulent prong.

21 **IV. PLAINTIFF WAIVED ANY CLAIMS BASED ON ALLEGEDLY INVALID** 22 **CLICKS BY FAILING TO USE REDDIT’S CLAIMS PROCESS**

23 Plaintiff’s claims are also foreclosed by the plain language of the parties’ contract, which
 24 provides for an exclusive remedy in the event an advertiser suspects it has been charged for
 25 invalid clicks. Specifically, Section 3 of the Ads Platform agreement provides as follows:

26 You acknowledge that third parties may generate impressions, clicks, or other desired
 27 actions with respect to your advertisements for prohibited or improper purposes. ***Your***
 28 ***sole remedy for any prohibited or improper third-party conduct with respect to the***
Platform is to make a claim for advertising credit within 45 days of the applicable
invoice date.

1 Ex. B § 3 (emphasis added).

2 The Complaint does not allege whether Plaintiff ever disputed a charge or made a claim
3 for advertising credits under Section 3. In any event, that exclusive remedy precludes Plaintiff's
4 claims here. Plaintiff either failed to timely submit a claim under Section 3 (in which case it
5 waived any such claim)⁵ or it submitted a claim for an advertising credit, which is an appropriate
6 remedy under the circumstances. *See, e.g., Free Range Content, Inc. v. Google Inc.*, No. 14-cv-
7 02329-BLF, 2016 U.S. Dist. LEXIS 64365, at *33-40 (N.D. Cal. May 13, 2016) (granting
8 motion to dismiss and enforcing exclusive remedy in Google Ads contract where "publisher
9 waives any payment-related claim by failing to dispute the payment or withholding within 30
10 days."). As in *Free Range*, Plaintiff's failure to use the process provided for in the Ads Platform
11 contract "bars [its] claims in their entirety." *Id.* at *38.

12 CONCLUSION

13 Because Plaintiff lacks standing and its Complaint fails to state a claim upon which relief
14 can be granted, Reddit respectfully requests the Court dismiss Plaintiff's Complaint with
15 prejudice.

16
17 Dated: June 18, 2024

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

18
19 By: /s/ Dale Bish

Dale Bish
E-mail: dbish@wsgr.com

21 Attorney for Defendant
22 REDDIT, INC.

23
24
25
26 _____
27 ⁵ If Plaintiff's failed to timely submit a claim, the contract makes clear that it is waived. Ex. B
28 § 3 ("TO THE FULLEST EXTENT PERMITTED BY LAW, YOU WAIVE ALL CLAIMS
RELATED TO PAYMENTS OR CHARGES UNLESS THE CLAIM IS MADE WITHIN THE
CLAIM PERIOD.")